EXHIBIT 1

THE

FOURTH PART

OF THE

Institutes of the Laws of England.

CONCERNING

THE JURISDICTION OF COURTS.

Proverbs 22. 28. *Ne transgrediaris antiquos terminos quos posuerunt patres tui.*

Terminos propriæ potestatis egressus in aliam messem perperam mittit falcem suam.

Authore EDWARDO COKE, MILITE, *J. C.*

Hæc ego grandævus posui tibi, candide lector.

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that I ſhall not ſue him? To whom Billing the chief juſtice anſwered, you are not bound to obey it, becauſe that commandment is againſt law: but ſeing that toucheth upon the juriſdiction of the court, let us in the next place handle that point.

The Juriſdiction of the Court.

In the chancery are two courts, one ordinary, *coram domino rege in cancellaria*, [a] wherein the lord chancelour or lord keeper of the great ſeale proceeds according to the right line of the laws and ſtatutes of the realm, *ſecundum legem et conſuetudinem Angliæ*. [b] Another extraordinary according to the rule of equity, *ſecundem æquum et bonum*. And firſt of the former court.

[a] 8 E. 4. 5. 9 E. 4. 15. 14 E. 4. 7.

[b] Stan. prær. c. 20. fo. 65. b. Pl. com. fo. 72.

[c] He hath power to hold plea of *ſcire fac'* for repeal of the kings letters patents, of petitions, *monſtrans de droits*, traverſes of offices, partitions in chancery, of *ſcire fac'* upon recogniſances in this court, writs of *audita querela* and *ſcire fac'* in the nature of an *audita querela* to avoid executions in this court; [d] downents in chancery, the writ *de dote aſſignanda* upon offices found, execution upon the ſtatute ſtaple, or recogniſance in nature of a ſtatute ſtaple upon the act of 23 H. 8. but the execution upon a ſtatute merchant is retornable either into the kings bench, or into the common place, and all perſonall actions by or againſt any officer or miniſter of this court in reſpect of their ſervice or attendance there. [a] In theſe if the parties deſcend to iſſue, this court cannot try it by jury, but the lord chancelour or lord keeper delivereth the record by his proper hands into the kings bench to be tried there; becauſe for that purpoſe both courts are accounted [b] but one, and after triall had to be remanded into the chancery, and there judgement to be given. But if there be a demurrer in law, it ſhall be argued and adjudged in this court. Nota, the legall proceedings of this court be not inrolled in rolls, but remaine *in filaciis* being filed up in the office of the pety-bag. [c] Upon a judgement given in this court a writ of error doth lie retornable into the king's bench: [d] the ſtile of the court of the kings bench is *coram rege* (as hath been ſaid) and the ſtile of this court of chancery is *coram domino rege in cancellaria, et additio probat minoritatem*. And in this court the lord chancelour or the lord keeper is the ſole judge: and in the kings bench there are four judges at the leaſt.

[c] Rot. par. 8 H. 4. nu. 122. 2 R. 3. 1.

[d] Regiſt. 297. F. N. B. 263. Stanf. prær. ca. Rot. par. 18 E. 3. nu. 41, 42.

[80]

[a] 13 E. 2. coram rege, rot. 51. London.

[b] 10 E. 3. 61. 24 E. 3. 65. 77.

[c] 18 E. 3. 25. 17. aſſ. 24. 14 Eliz. Dier 315. Pl. com. 393. a.

[d] In par. Tr. 9. H. 6. rot. 5. int. placita regis.

This court is *officina juſtitiæ*, out of which all originall writs and all commiſſions which paſſe under the great ſeal go forth, which great ſeal is *clavis regni*, and for thoſe ends this court is ever open.

Officina juſtitiæ.

Fleta lib. 2. ca. 12. Bract. li. 5. fo. 413. Britton ca. 84. Fleta lib. 6. ca. 35. & 36.

Of this court Fleta *ubi ſupra*, ſaith, *Dicuntur brevia cum ſint formata ad ſimilitudinem regulæ juris, quæ breviter, et paucis verbis intentionem proferentis exponunt, ſicut regula juris, rem quæ eſt breviter enarrat: non tamen ita debet eſſe bre. quin rationem et vim intentionis contineat. Et ſunt quædam brevia formata ſub ſuis caſibus, et quædam de curſu quæ conſilio totius regni ſunt approbata. quæ quidem mutari non poterunt abſque eorundem contraria voluntate. Sunt et brevia ex eis ſequentia quæ dicuntur judicialia, et ſæpius variantur ſecundum varietatem placitorum proponent' et reſpondent', petentis et excipientis et ſecundum varietatem reſponſionum. Sunt et quædam quæ dicuntur magiſtralia et ſæpius variantur ſecundum diverſitatem caſuum, factorum et querelarum, et quorum quædam*

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quædam sunt personalia, et quædam realia, et quædam mixta, secundum quod sunt actiones diversæ vel variæ, quia tot erunt formulæ brevium, quod sunt genera actionum, quia non potest quis sine brevi agere, præcipue de libero tenemento suo, quia non tenetur quis respondere sine brevi, nisi gratis voluerit, et cum hoc fecerit quis, ex hoc ei non injuriabitur: volenti enim et scienti non fit injuria. De eadem autem re, plures alicui competere poterunt actiones, ordine autem, ut convenit, observato. Breve quidem regis in se nullam debet continere falsitatem, nec aliquem errorem: apparere debet vel in prima sui figura non vitiosum, maxime si fuerit patens sive apertum, quia originalia quædam sunt clausa, et quædam aperta. Et sive aperta, sive clausa, apparere non debent abrasa, nec abolita: et si inveniatur abrasio, tunc refert quo loco, à quo, et quando. Quo loco? videlicet utrum in narratione facti vel juris. Si autem in narratione facti, cadet coram justic' quasi suspectum. Facta enim et nomina mutari non debent, sed jura ubique scribi possunt. A quo? utrum videlicet per clericum cancellar' cui autoritas data fuerit, vel ausu temerario per alium, sicut clericum justic,' vel vic' ad procurationem alicujus partis: quo casu omnes agentes et consentientes tanquam falsarii puniantur. Item quando? videlicet utrum hoc fiat antequam bre. in curia resuscitatum et publicatum, vel post. Si autem post, erit breve suspectum et cadet, si à tenente fuerit hoc calumpniatum. Fiunt autem brevia judicialia in cancellaria ex recognitionibus et contractibus habitis et in rotulis cancellariæ irrotulatis et ex recordo cancellario et clericis sibi associatis per hac constitutionem concesso. Quia de hiis quæ recordata sunt coram cancellar' domini regis, et ejus justic' qui recordum habent et in rotulis eorum irrotulantur, non debet fieri processus placiti per summonitionem, vel attachiament', essonia, visus tre. et alias solempnitates cur' sicut fieri consuevit ex contractibus, et conventionibus factis extra curiam. Observandum est de cætero quod ea quæ inveniuntur irrotulata coram hiis qui recordum habent vel in finibus contenta, cum sint contractus sive conventiones vel obligationes sive servicia aut consuetudines recognitæ sive alia quæcunq; irrotulata quib' cur' regis sine juris et constitutionis offensa authoritatem præstare potest' [81] *talem de cetero habeat vigorem, quod non sit necesse de hiis placitare in posterum, sed cum venerit querens ad curiam domini regis, si recens sit cognitio, vel finis, viz. infra annum per bre. levatus, statim habeat bre. de executione illius recognitionis factæ: et si forte à majore tempore transacto facta fuerit illa recognitio, vel finis levatus: præcipiatur vic' quod scire fac' parti de qua fit queremonia, quod sit ad certum diem, ostens. si quid sciat dicere quare hujus irrotulata vel in fine contenta executionem habere non debeant. Et si ad diem venerit, et nihil sciat dicere quare executio fieri non debeat, præcipiatur vic' quod rem irrotulatam vel in fine contentam exequi fac'. Eodem modo mandetur ordinario in suo casu, observato nihilominus quod inferius dicetur in statuto de medio qui per judicium aut recognitionem est obligatus. Ex hac quidem constitutione oriuntur bria. judicialia in cancellaria sicut coram ipsis justic. Ipsi autem collaterales et socii cancellarii esse dicuntur præceptores, eo quod bria. causis examinatis remedialia fieri præcipiunt, et hoc quoque cum fine denar' ad opus domini regis, et quoque sine fine, eo quod omnia bria. non sunt omni tempore æquipollentia. De brevibus autem coram justic' ad primas assisas cum in partes illas venerint, fines capere non consueverunt, eo quod ad tempus itineris justic' ligat constitutio Magnæ Cartæ quæ talis est: Nulli justitiam negabimus, vendemus, vel differemus: sed non inhibetur quin fines capiantur pro brevibus possessionum, et actionum personalium, pro celeriore justitia habenda; qui quidem pro qualitatibus et quantitatibus*

portionum

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portionem conceſſi in eiſdem brevibus imbreviabuntur, et in rotulis cancellariæ irrotulantur. Qui quidem rotuli ſingulis annis ad ſcaccar' liberabuntur, et fines hujus extrahuntur et per ſummon' ſcaccarii leventur. Clauſula vero finis talis eſt, Et cape ſecuritatem à præfato tali de 40 ſolid. ad opus noſtrum pro hoc brevi. *Verba autem extract' de ſcaccario ſunt hæc.* De A. de B. pro brevi habend' dim marc' *vel amplius prout finis factus fuerit. Conceduntur aliquando conquerentib' ob favorem paupertatis quod ubi præſumi poteſt ſic quod plegios invenire non poſſunt de proſequend' clamorem ſuum quod ſecuritatem præſtent vic' per fidei interpoſitionem ſuam, non tamen in actionibus perſonalibus hoc concedendum eſt. Habet et rex clericos in officio illo expertos et legales qui formulas brevium cognoſcunt, qui approbanda admittunt et defectiva omnino repellunt, quib' omnia bria. priuſquam ad ſigillum proveniunt cum deliberatione diſtincte et aperte in ratione, dictione, litera et ſyllaba examinare injunctum eſt. Et ſciendum quod nullum bre. niſi per manus eorundem ad ſigillum debet admitti. Habet etiam ſex clericos ſuos prænotarios in officio illo, qui cum clericis memoratis familiares, &c. eſſe conſueverunt et præcipue ad victum et veſtitum qui ad bria. ſcribenda ſecundum diverſitates querelarum ſunt intitulati. Et qui omnes pro victu et veſtitu de proficuo ſigilli in cujuſcunque uſus pervenerit debent honeſte inveniri. Sunt etiam nihilominus clerici juvenes et pedites quibus de gratia cancellar' conceſſum eſt pro expeditione populi bria. facere curſoria, dum tamen ſub advocatione clericorum ſuperiorum fuerint qui eorum facta in eorum receperint pericula. Et in quolibet bri. debet ſcribentis nomen inbreviari qui warrantizare poterint in peccatores ſi neceſſe fuerit. Et ne præfati clerici ſuperflua petant ſtipendia pro ſcriptura ſua, conſtitutum eſt quod tam clerici juſtic' quam cancellar' de ſolo denario pro ſcriptura unius brevis ſe teneant contentos.*

And this court is the rather alwayes open, for that if a man be wrongfully impriſoned in the vacation, the lord chancelour may grant a *habeas corpus* and do him juſtice according to law, where neither the kings bench nor common pleas can grant that writ but in the term time; but this court may grant it either in term time or vacation. So likewiſe this court may grant prohibitions at any time either in terme or vacation; which writs of prohibition are not retornable: but if they be not obeyed, then may this court grant an attachment upon the prohibition retornable either in the kings bench or common place.

* The author of that book ſpeaking of the court of chancery, and of the juriſdiction it then had, ſaith, *Curia cancellariæ regiæ eſt curia ordinaria pro brevibus originalibus emanandis, ſed non placitis communibus tenendis.*

* New Tales, or *Novæ Narrationes*, written about the beginning of E. 3.

Divers acts of parliament give authority to the lord chancelour to heare and * determine divers offences and cauſes in the court of chancery, which is ever intended in this court proceeding in Latin, *ſecundum legem et conſuetudinem Angliæ*, and the defendant ſhall not be ſworn to his anſwer, nor examined upon interrogatories, and upon iſſue joyned it ſhall be tried in the king's bench, *ut in ſimilibus caſibus ſolet.* But our purpoſe is not to enumerate all theſe ſtatutes, for our aim is principally at the generall juriſdiction of this court.

27 E. 3. cap. 13. 2 R. 3. fo. 3. 13 E. 4. Dier 12 El. 288. a reſolve.

*[82]

Officers and miniſters of this court.

The officers and miniſters of this court of common law doe principally attend and doe their ſervice to the great ſeal, as the * twelve maſters of the chancery, whereof the maſter of the rols is

See the 2 part of the Inſt. W. 2. ca. 24. verb. *Clerici de Cancellaria.*

* In the parliament rol of 5 R. 2. nu. 23. they are called chief clerks.

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the chief, who by their originall inſtitution, as it is proved before, ſhould be expert in the common law, to ſee the forming and framing of originall writs according to law, which are not of courſe; whereupon ſuch are called in our ancient authors *brevia magiſtralia*. The clerk of the crown, the clerk of the hamper, the ſealer, the chafe wax, the controller of the chancery, twenty four curſitors for making writs of courſe or formed writs according to the regiſter of the chancery, the clerk of the preſentations, the clerk of the faculties, the clerk examiner of letters patents, the clerks of the pettibag, and the ſix atturnies. The proceſſe in this court is under the great ſeal according to the courſe of the common law.

Having ſpoken of the court of ordinary juriſdiction, it followeth according to our former diviſion, that we ſpeak of the extraordinary proceeding according to the rule of equity, *ſecundum æquum et bonum*, wherein we will purſue our former order.

Of the antiquity of this court of equity.

Albeit our ancient authors, the Mirror, Glanvill, Bracton, Britton and Fleta doe treat of the former court in chancery, and of originall writs and commiſſions iſſuing out of the ſame, yet none of them do once mention this court of equity. We have alſo conſidered what caſes in this court of equity have been reported in our books, and we find none before the reign of H. 6. and in that kings time, and afterwards plentifully, we then turned our eies to acts of parliaments and parliament rols.

Henry Beaufort ſon of John of Gaunt biſhop of Winch. cardinal of St. Euſebius, lord chancelor in the beginning of the reign of H. 6. and in that kings reign John Kemp cardinall of S. Rufeline archbiſhop of York, lord chancelor. See Rot. parl. 28 H. 6. nu. 10. & 35 H. 6. fo. 3.

[a] Some have thought that the ſtatute of 36 E. 3. gave the chancelor his firſt authority for his proceeding in courſe of equity, by which it is enacted, That if any man think himſelf grieved contrary to any of the articles above written, or others contained in divers ſtatutes, will come to the chancery or any for him, and thereof make his complaint, he ſhall preſently have there remedy by force of the ſaid articles and ſtatutes, without elſewhere purſuing to have remedy. But certainly this act giveth the chancelor no power to proceed in courſe of equity, but that he grant to the party grieved originall writs which are called remediall grounded upon any ſtatute for his relief, and there is no ſtatute that gives the party grieved remedy in equity. Laſtly, the laſt words of the act, without elſewhere purſuing to have remedy, doe manifeſt that the meaning of the makers of the act is to direct the party to be relieved by the common law, by actions upon theſe ſtatutes, and not elſewhere.

[a] 36 E. 3. cap. 9.

Rot. par. 13 R. 2. nu. 30.

In the parliament holden 13 R. 2. the commons petitioned to the king, That neither the chancellor nor other counſellor doe make any order againſt the common law, nor that any judgment be given without due proceſſe of law. Whereunto the kings anſwer was, The uſages heretofore ſhall ſtand, ſo as the kings royalty be ſaved. In the ſame parliament another petition was, That no perſon ſhould appear upon a writ *De quibuſdam certis de cauſis*, before the chancelor or any other of the councell, where recovery is therefore given by the common law: whereunto the kings anſwer is, The king willeth as his progenitors have done, ſaving his regalty.

17 R. 2. ca. 6.

In the parliament holden in 17 R. 2. it is enacted at petition of the commons, That foraſmuch as people was compelled to come before the kings councell, or in chancery, by writs grounded upon untrue ſuggeſtions, that the chancelor for the time being preſently after

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after that ſuch ſuggeſtions be duly found and proved untrue, ſhall have power to ordain and award dammages according to his diſcretion * to him which is ſo travelled unduly as is aforeſaid. This act extendeth to the chancelor proceeding in courſe of equity, and extendeth not to a demurrer in law upon a bill, but upon hearing of the cauſe upon theſe words in the act [duly found and proved] and this is the firſt parliament that I find touching this matter. And in the roll of the ſame parliament, I finde the firſt decree in chancery that ever I obſerved, the effect whereof was: John de Windſor complaineth and requireth to be reſtored to the mannors of Rampton, Cottenham and Weſtwick with their appurtenances in the county of Cambridge, the which were adjudged to him by the kings award, then in the poſſeſſion of Sir John Liſley, and now withholden by Sir Richard le Scrope, who by champerty bought the ſame: the cauſe was this. Upon a petition of Windſor againſt Liſley they both compromitted the matter to the kings order, the king committed the ſame to the councell, they after digeſting of the ſame made a decree for Windſor under the privy ſeal, they ſend warrant to the chancelor to confirm the ſame, which was done under the great ſeal by a ſpecial injunction to Liſley, and to write to the ſherif to execute the ſame. After this, Liſley by petition to the king requireth that the ſame may be determined at the common law, notwithſtanding any former matter: the king accordingly by privy ſeal giveth warrant to the chancelor to make a *ſuperſedeas*, the which was done by privy ſeal, after which Sir Richard Leſcrope bought the ſame. Upon the ripping of the whole matter, this ſale was thought no champerty, whereupon it was adjudged, that the ſaid Windſor ſhould take nothing by his ſaid ſuit, but to ſtand to the common law, and that the ſaid Sir Richard ſhould goe without day.

7 E. 4. fo. 14.

Rot. par. 17 R. 2. nu 10. William Courtney ſon of Hugh earl of Devon, was then biſhop of Cant. and lo. chancelor when this decree was made.

Champerty.

The commons petitioned that no writs or privy ſeals be ſued out of the chancery, exchequer or other places to any man to appear at a day upon a pain, either before the king and his councell, or in any other place, contrary to the ordinary courſe of the common law: whereunto the king anſwered: that ſuch writs ſhould not be granted without neceſſity.

Rot. par. 2 H. 4. nu. 69.

Amongſt the petitions of the commons you ſhall find this, that all writs of *ſubpœna* and *certis de cauſis*, going out of the chancery and the exchequer may be enrolled, and not granted of matters determinable at the common law, on pain that the plaintif doe pay by way of debt to the defendant forty pound: whereunto is anſwered, the king will be adviſed.

Rot. par. 3 H. 5. nu. 46. Edmond Staffford archb. of York, was lord chancellor at this time.

It is enacted, to endure untill the next parliament, that the exception (how that the party hath ſufficient remedy at the common law) ſhall diſcharge any matter in chancery. At the n xt parliament you ſhall find a petition in theſe words. No man to be called by privy ſeal or *ſubpœna* to anſwer any matters but ſuch as have no remedy by the common law, and that to appear ſo by the teſtimony of two juſtices of either bench, and by indenture between them and the plaintif, which plaintif ſhall always appear in proper perſon, and find ſurety by recognizance to proſecute with effect the matters of the bill only, and to anſwer dammages if the ſame fall out againſt the plaintif.

Rot. Par. 9 H. 5. nu. 25.

Rot. Par. 1 H. 6. nu. 41.

Never good petition in parliament dieth, but firſt or laſt will take effect. Vid. ſup. fa. 32. 15 H. 6. ca. 4.

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But in *anno* 15 H. 6. for a perpetuall law, and for the true juriſdiction of this court it is enacted in theſe words.

30 H. 6. fo. 26. 4 E. 4. 8. 14 E. 4. 1. 16 E. 4. 9. b. 18 E. 4 13. 6 E. 4. 10. b. 7 H. 7. 12. Forteſc. ca. 34. Rot. par. 14 E. 4. nu. 5. William. Shetfords caſe Doct. & Stud. cap. 18. 24. 50. 31 H. 6. ca. 2.

Item, foraſmuch as divers perſons have before this time been greatly grieved by writs of *ſubpœna*, purchaſed for matters determinable by the common law of his land, to the great dammage of ſuch perſons ſo vexed, in ſubverſion, and impediment of the common law aforeſaid; our ſoveraign lord the king will, that the ſtatutes thereof made ſhall be kept after the form and effect of the ſame. And that no writ of *ſubpœna* be granted from henceforth till ſurety be found to ſatisfie the party ſo grieved and vexed for his dammages and expences, if ſo be that the matter may not be made good, which is contained in the bill. In *anno* 31 H. 6. cap. 2. there is a proviſo in theſe words. Provided that no matter determinable by the law of this realm ſhall be by the ſaid act determined in other form then after the courſe of the ſame law in the kings courts having determination of the ſame law.

[84]

Trin. 2 Jac.

Tr. 2 Jac. *regis*, upon ſuit made to the king for erecting of a new office for taking of ſurety according to the ſaid act of 15 H. 6. cap. 4. the king referred the cauſe to Popham chief juſtice, who upon conference with the judges in Fleetſtreet, reſolved that the ſurety was by force of that act to be by obligation, and to be made by the party grieved himſelf, becauſe it concerneth his dammages and coſts, and the court was to ſet down the form and ſum of the obligation, and in the end the ſuit prevailed not.

* Paſch. 29 El. in Scaccario Woods caſe. Vide 7 El. Dier 238. Seignior Shandois caſe.

* Paſch. 29 Eliz. *in ſcaccario*, in Woods caſe adjudged upon the ſtatute of 2 E. 6. cap. 13. for the like reaſon that the forfeiture for non-payment of tithes ſhall goe to the party grieved.

Reaſons, 1. *à majori ad minus.* Rot par. 2 R. 2. nu. 18. Rot. par. 13 R 2. nu. 10.

1. Rot. par. 2 R. 2. nu. 18. the high court of parliament relieveth but ſuch as cannot have remedy but in parliament.

The parliament for matters determinable at the common law doth remit the parties thereunto.

2 *Regula.*

2. *Nunquam decurritur ad extraordinarium, ſed ubi deficit ordinarium.*

3.

3. Whereas matters of fact by the common law are triable by a jury of twelve men, this court ſhould draw the matter *ad aliud examen*, that is, to judge upon depoſition of witneſſes, which ſhould be but evidence to a jury in actions real, perſonall, or mixt.

37 H 6. 14. 27 H. 8. 18.

This court of equity proceeding by Engliſh bill is no court of record, and therefore it can bind but the perſon only, and neither the ſtate of the defendants lands, nor property of his goods or chattels.

Trin. 2 Jac. rot. in ſcaccario. Sir Thomas Smithſmithorps caſe.

Egerton lord chancelour impoſed a fine upon Sir Tho. Themilthorp knight, for not performing his decree in chancery concerning lands of inheritance, and eſtreated the ſame into the exchequer: and upon proceſſe the party appearing pleaded that the fine was impoſed by the lord chancelour for not performance of his decree, and that he had no power to aſſeſſe the ſame. The atturny generall confeſſed the plea to be true, *et petit adviſamentum curiæ*, concerning the power of the chancelor in this caſe,

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caſe, and upon debate of the queſtion in court, and good adviſement taken, it was adjudged that the lord chancelor had no power to aſſeſſe any ſuch fine, for then by a mean he might bind the intereſt of the land where he had no power, but of the perſon only, and thereupon the ſaid Sir Thomas Themilthorp was diſcharged of the ſaid fine.

Afterward the ſaid lord chancelor decreed againſt Waller certain lands, and for not performance of the decree impoſed a fine upon him, and upon proceſſe out of the court of chancery extended the lands that Waller had in Midd. &c. whereupon Waller brought his aſſiſe in the court of common pleas, where the opinion of the whole court agreed *in omnibus*, with the court of exchequer. Wallers caſe.

The lord chancelor or the lord keeper is ſole judge both in this court of equity, and in the court concerning the common law; but in caſes of weight or difficulty he doth aſſiſt himſelf with ſome of the judges of the realm, and no greater exception can be taken hereunto then in caſe of the lord ſteward of England being ſole judge in triall of the nobility, who alſo is aſſiſted with ſome of the judges. *The Judge of this court of equity, &c.*

For this court of equity the ancient rule is good. Three things are to be judged in court of conſcience: covin, accident, and breach of confidence.

All covins, frauds, and deceits, for the which is no remedy by the ordinary courſe of law.

Accident, as when a ſervant of an obligor, morgageor, &c. is ſent to pay the mony on the day, and he is robbed, &c. remedy is to be had in this court againſt the forfeiture, and ſo in the like.

The third is breach of truſt and confidence, whereof you have plentifull authorities in our books.

[85]

The caſe in the chancery between the earl of Worceſter and other plaintifs, and Sir Moyl Finch and Eliz. his wife defendants was this. The queen being ſeiſed of the mannor of Raveſton and of certain lands in Stokegoldington, (which the plaintif pretended to be a mannor either in right or reputation) granted by her letters patents the mannors of Raveſton and Stokegoldington to the ſaid Sir Moyl, and John Awdelye, and their heirs: but this was upon confidence, that they ſhould grant the mannor of Raveſton to Sir Thomas Heneage and Anne his wife, and to the heirs of Anne: and the mannor of Stokegoldington to Sir Thomas and Anne, and the heirs of Sir Thomas. Sir Moyle and Awdelye by deed indented and inrolled *termino Trin.* 1588. 30 Eliz. in this court for a thouſand pound bargained and ſold to Sir Thomas Henage and his wife the mannors of Raveſton and Stokegoldington, and the ſcite of the priory of Raveſton in the county of Buck. and all other their lands, tenements and hereditaments in Ravenſton, Weſton, Pidington, and Stokegoldington, in the county of Buck. To have and to hold the mannor of Raveſton and the ſcite of the ſaid priory, and all the premiſſes in Ravenſton, Weſton, Pidington, and Stokegoldington (other then the ſaid mannor of Stokegoldington) to the ſaid Sir Thomas and dame Anne, and the heirs of the ſaid dame Anne: and to have and to hold the ſaid mannor of Stokeg. to the ſaid Sir Thomas and dame Anne, and to the heirs of Sir Thomas. Sir Thomas had iſſue by Mich. 42 & 43 El. in Cancellar'. Sir Moyl Finches caſe.

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the ſaid dame Anne the ſaid Elizabeth one of the defendants his only child, and afterwards the ſaid dame Anne died: the defendant alleadged that Sir Thomas was diſſeiſed of Stokegoldington, and the plaintif denied it. And after Sir Thomas by deed indented and inrolled, bargained and ſold the mannor of Stokegoldington to the plaintif for payment of his debts and died: and for payment of his debts, they exhibited their bill againſt Sir Moyl, and the ſaid Eliz. his wife, for the ſaid mannor of Stokegoldington, and the lord chancelor decreed it for the plaintif. And upon a petition preferred by the defendants to queen Elizabeth, ſhe referred the conſideration of the whole caſe to all the judges of England: and after hearing of the counſell of both parts on ſeverall days, and conference between themſelves, theſe points for rules in equity were reſolved. Firſt, that if there were any diſſeiſon, that nothing paſſed to the plaintif either in right or equity, for the diſſeiſor was ſubject to no truſt, nor any *ſubpœna* was maintainable againſt him, not only becauſe he was in the *poſt*, but becauſe the right of inheritance or freehold was determinable at the common law and not in the chancery, neither had *ceſti que uſe* (while he had his being) any remedy in that caſe. Secondly, it was reſolved by all the juſtices, that admitting that Sir Thomas Heneage had a truſt, yet could not he aſſign the ſame over to the plaintif, becauſe it was a matter in privity between them, and was in nature of a *choſe* in action, for he had no power of the land, but only to ſeek remedy by *ſubpœna*, and not like to *ceſti que uſe*, for thereof there ſhould be *poſſeſſio fratris*, and he ſhould be ſworn on juries in reſpect of the uſe, and he had power over the land by the ſtatute of 1 R. 3. cap. and if a bare truſt and confidence might be aſſigned over great inconvenience might thereof follow by granting of the ſame to great men, &c. Thirdly, when the land deſcended to Elizabeth one of the defendants, as heir to her mother, and the truſt deſcended to her from her father, the truſt was drowned and extinguiſhed. Fourthly, when any title of freehold or other matter determinable by the common law come incidently in queſtion in this court, the ſame cannot be decided in chancery, but ought to be referred to the triall of the common law where the party grieved may be relieved by error, attaint, or by action of higher nature. And when the ſuit is for evidences, the certainty whereof the plaintif ſurmiſeth he knoweth not, and without them he ſuppoſeth that he cannot ſue at the common law: It was reſolved that if the defendant make no title to the land, then the court hath juſt juriſdiction to proceed for the evidence; but if he make title to the land by his anſwer, then the plaintif ought not to proceed, for otherwiſe by ſuch a ſurmiſe, inheritances, freeholds, and matters determinable by the common law ſhall be decided in chancery in this court of equity. And thus were theſe points reſolved by Sir John Popham, Sir Edmond Anderſon, Sir William Periam, and Walmeſlye, Gawdye, Fenner, and Kingeſmill juſtices, and Clark and Savill barons of the exchequer, and all this amongſt other things they certified under their hands into the chancery, and thereupon the former decree was reverſed. And in debating of this caſe it was reſolved by the two chief juſtices, chief baron, and divers other juſtices, that if a man make a conveyance, and expreſſe an uſe, the party himſelf or his heirs ſhall not be received to averre a ſecret truſt, other then the expreſſe limitation of the uſe, unleſſe ſuch truſt

A diſſeiſor ſubject to no truſt.

A truſt cannot be aſſigned over. 32 El. Dier fo. 369. pl. 50.

Matters determinable by the common law cannot be decided in chancery.

Suit for evidence.

[86]

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truſt or confidence doe appear in writing, or otherwiſe declared by ſome apparent matter. And Popham ſaid, that covin, accident, and breach of confidence were within the proper juriſdiction of this court.

Mich. 39 & 40 El. in Cancellar'.

Thomas Throckmorton eſquire exhibited a bill in this court againſt Sir Moyl Finch knight, claiming a leaſe of the mannors of R. and S. for many years to come, and ſhew clear matter in equity to be relieved againſt a forfeiture pretended by Sir Moyle for breach of a condition where there was no default in the plaintif, &c. Unto which bill the defendant pleaded this plea, that for the triall of the forfeiture of which leaſe, he made a leaſe for years to one priviledged in the exchequer, who brought an *ejectione firme* againſt the plaintif, and upon pleading a demurrer in law, the leſſee had judgment to recover againſt Thomas Throckmorton (now plaintif in chancery:) whereupon Thomas Throckmorton brought a writ of error in the exchequer chamber, where upon due proceeding the judgement was affirmed, and demanded judgment, if after theſe judgements given at the common law he ought to be drawn to make any further anſwer in this court of equity. And Egerton lord chancelor delivered his opinion in court, that the defendant ſhould anſwer to the bill: and foraſmuch as the caſe was of great conſequence, the conſideration of the demurrer was by the queen referred to all the judges of England: before whom the councell of Throckmorton ſaid, that the intent of the lord chancelor was not to impeach the ſaid judgments, but confeſſing the ſaid judgments, to be relieved upon matter in equity: as if a man hath (as he is adviſed) two matters to aid him, matter at the common law, and matter in equity, and being impleaded at the common law, doth by advice of his councell aſſay the common law, where his adverſary prevaileth againſt him, and hath judgment accordingly, yet in this caſe the party may, confeſſing the judgment, ſue to be relieved upon a collaterall matter in equity: and thereupon they ſhewed ſome preſidents in time of H. 8. E. 6. &c. and one in the point between Ward and Fulwood. But upon great deliberation it was reſolved by all the judges of England, that the plea of Sir Moyl Finch was good, and that the lord chancelor ought not to examine the matter in equity after the judgement at the common law: for though the lord chancelor (as hath been ſaid) would not examine the judgment, yet he would by his decree take away the effect of the judgment: and for the preſidents, they were grounded upon the ſole opinion of the lord chancelor, and paſſed *ſub ſilentio*. But that ſuch a courſe ſhould be permitted, it ſhould be not only full of inconvenience, but directly againſt the laws and ſtatutes of the realm, againſt which no preſident or preſcription can prevail; * which you may read at large in the third part of the Inſtitutes, cap. Premunire. Which reſolution of the judges was ſignified by Popham chief juſtice to the lord chancelor, and thereupon no further proceeding was againſt Sir Moyle Finch, but his plea ſtood.

* 27 E. 3. cap. 1. 4 H. 4. cap. 22. &c. in the preamble. Doct. & Stud. 30. W. 2. ca. 5. Vid. Paſch. 5 E. 4. coram rege rot. 35. Sir Simon Norres caſe. Nota.

In a caſe depending in chancery by Engliſh bill between Mears plaintif and Saint-John and his wife adminiſtratrix of John Alnion defendant, the caſe was this: that the inteſtate took the profits of the lands of the plaintif being within age by force of a truſt repoſed in him by the father of the plaintif by his laſt will, the

Mich. 37 & 38 El. in Cancellar.

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yearly value of which lands was fourſcore pounds *per annum*, and the inteſtate took the profits from the 23 year of queen El. untill the 33 year of her reign, and with parcell of the profits purchaſed lands in fee which deſcended to his heir, and left aſſets to his adminiſtratrix one of the defendants to ſatisfie the plaintif, all debts paid. The queſtion was, whether in this caſe the adminiſtratrix might not be charged in equity for the ſaid mean profits: and Sir Thomas Egerton maſter of the rols ſaid, that he had ſeen a caſe in chancery in *anno* 34 H. 6. reſolved by all the judges of England remaining in the Tower, that where the feoffees to uſe took the profits of the land, and received the rents, and made their executors, and died leaving aſſets to ſatisfie all debts over and above the ſaid rents and profits, that the executors ſhould be charged to ſatisfie *ceſti que uſe* for the ſaid rents and profits, and accordingly it was decreed in Mears caſe againſt the defendant: but whether the heir ſhould be contributory or no, it was doubted.

[87]

Paſch. 32 El. in Cancellaria. Withams caſe. Eborum. Vide 7 E. 4. 14. & 18 E. 4. 11. & 12.

Withams caſe in the chancery was, that a tearm for years was granted to the uſe of a feme ſole, ſhe took huſband and died, whether the huſband ſhould have the uſe, or the adminiſtrators of the feme, was referred to the judges; and by them it was reſolved, that the adminiſtrators ſhould have it, and not the huſband, becauſe that this truſt of a feme was a thing in privity, and in nature of an action, for which no remedy was but by writ of *ſubpœna*. And ſo it was reſolved by the juſtices in Waterhouſes caſe, Hil. 8 Eliz. *Eborum*, for the truſt runneth in privity in this caſe, and a huſband ſhould not be tenant by the curteſie of an uſe, nor the lord of the villain ſhould have it at the common law.

Trin. 28 El. adjudge in the kings bench, in Peacocks caſe.

A man poſſeſſed of a tearm for years in lands, by his laſt will deviſed the ſame to one and the heirs of his body begotten, made his executors and died, the deviſee entreth by the aſſent of the executors, hath iſſue and aliens the tearm and dieth: this alienation barreth the iſſue, for a tearm for years cannot be entayled. And afterwards *anno* 31 Eliz. in a caſe depending in chancery between Higgins and Milles it was certified by the lord Anderſon and juſtice Walmſley (to whom it was referred) that no eſtate taile could be of a tearm, and that the alienation of the deviſee did bar the iſſue.

31 Eliz. between Higgins and Mils in Cancellaria.

Mic. 26. & 27 El. coram rege. Perrots caſe. 10 H. 6. 15. in London by preſcription. Nota this reſolution is againſt the court of requeſts. See hereafter, cap. 9.

In a premunire between John Perrot plaintif, and T. M. H. W. and others defendants, it was reſolved by Sir Chriſtopher Wray chief juſtice, and the court of kings bench, that the queen could not raiſe a court of equity by her letters patents, and that there could be no court of equity but by act of parliament, or by preſcription time out of mind of man. But the queen might grant power *tenere placita*, or *conuſans de plea*, for all muſt judge according to one ordinary rule of the common law, but otherwiſe it is of proceedings extraordinary without any certain rule.

Theſe caſes which upon ſo great and mature deliberation have been reſolved by the judges of the realm, and whereunto we were privy and well acquainted with, we have thought good to report, and publiſh for the better direction in like caſes hereafter.

How he is created. Camden, p. 131.

He is made lord chancelor of England, or lord keeper of the great ſeal, *per traditionem magni ſigilli ſibi per dominum regem*, and by taking his oath, *forma cancellarium conſtituendi regnante Henrico ſecundo fuit appendendo magnum Angliæ ſigillum ad collum cancellarii electi.*

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Some have gotten it by letters patents, [a] at will, and [b] one for tearm of his life; but it was holden void, becauſe an ancient office muſt be granted, as it hath been accuſtomed.

[a] 35 H. 6. 3. B. of Winch. 1 H. 6. nu. 16.

[b] Cardinal Woolſey.

[c] It is enacted and declared, that the common law of this realm is and always was, and ought to be taken, that the keeper of the great ſeal of England for the time being hath always had, uſed, and executed, and from thenceforth may have, take, uſe, and execute the ſame and the like place, authority, preheminence, juriſdiction, execution of laws, &c. as the lord chancelor of England for the time being lawfully uſed, &c.

[c] 5 El. ca. 18.

And ſo it appeareth in 18 E. 3. nu 41. that the lord chancelor, or lord keeper for the time being ought to have conuſance.

Rot. par. 18 E. 3. nu. 41.

[a] I finde that king H. 5. had two great ſeals, one of gold, which he delivered to the biſhop of Dureſme, and made him lord chancelour of England, and another of ſilver, which king Henry the 5 delivered to the biſhop of London to keep.

[88]

[a] Rot. par. 1 H. 6. nu. 13, 14. 13 R. 2. nu. 7. Vide Camden ubi ſupra.

[b] *William de Ayremin garden des rolles del chancelar' et ſes compagniens gardens del grand ſeale.* At this time was Robert Burnel biſhop of Bath and Wels chancelour of England.

[b] Stat. de forma mittendi extract. in ſcaccarium, anno 16 E. 1. vet. Mag. Carta, 2 part. fo. 47. b.

[c] It is to be obſerved, that where divers ancient ſtatutes ſpeak of the chancelour and of his lieutenant, it muſt of neceſſity be intended of ſuch a lieutenant, as the law doth allow of, and that cannot be of a deputy, for the chancelour cannot make a deputy, but *locum tenens* is to be taken for one that holdeth the place, or hath equall authoritie of the chancelour, and that is *cuſtos magni ſigilli*: and this agreeth with the judgement of the ſaid parliament in 5 Eliz. But all queſtions are now taken away by the ſaid act of 5 Eliz. and at this day there being but one great ſeale, there cannot be both a lord chancelour and a lord keeper of the great ſeale at one time, becauſe both theſe are but one office, as it is declared by the ſaid act.

[c] An. 27 E. 1. de libertatibus perquirendis. Vet. Mag. Carta, part 1. fo. 126, & 2 part fo. 57, &c.

It is ſaid before, that the chancelour by his ordinary power may hold plea of *ſcire fac'* to repeale the kings letters patents under the great ſeal being always inrolled in this court, which we (to make a true derivation of his name) ſhall now particularly touch. This writ of *ſcire fac'* to repeal letters patents doth lye in this ordinary courſe of juſtice in three caſes. The firſt, when the king by his letters patents doth grant by ſeverall letters patents one and the ſelf ſame thing to ſeveral perſons, the former patentee ſhall have a *ſcire fac'* to repeal the ſecond patent. Secondly, when the king granteth any thing that is grantable upon a falſe ſuggeſtion, the king by his prerogative *jure regio* may have a *ſcire fac'* to repeal his own grant. Thirdly, when the king doth grant any thing, which by law he cannot grant, he *jure regio* (for advancement of juſtice and right) may have a *ſcire fac'* to repeal his own letters patents. Now the judgement in all theſe three caſes is, *Quòd prædictæ litteræ patentes dicti domini regis revocentur, cancellentur, evacuentur, adnullentur, et vacuæ, et invalidæ, pro nullo penitus habeantur, et teneantur; ac etiam quod irrotulamentum eorundem cancelletur, caſſetur, et adnihiletur, &c.* Hereof our lord chancelour of England (for forein chancelours, it may be, have not like authority) is

Cancellarius unde.

6 E. 4. 9. Dier 3 Eliz. 137. 2 E. 3. 7. 17 E. 3. 59. 21 E. 3. 47.

Lib. 8. fo. 14. &c.

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is called *cancellarius, à cancellando, i. à digniori parte*, being the higheſt point of his juriſdiction to cancell the kings letters patents under the great ſeale, and damming the inrolment thereof, by drawing ſtrikes through it like a lettice.

The Lord chancellors oath.

And all this which hath been ſaid concerning the office of the lord chancelour, or lord keeper is included within his [a] oath, which followeth in theſe words, and conſiſteth upon ſix parts. He ſhall ſweare,

[a] Rot. Par. 10 R. 2. rot. 8. The oath recited. Vid. rot. parl. 11 H. 4. 1. nu. 28.

1. That well and truly he ſhall ſerve our ſoveraigne lord the king and his [b] people in the office of chancelour (or lord keeper.)

[b] Becauſe he hath power of judicature, as is aforeſaid.

2. That he ſhall doe right to all manner of people, poore and rich, after the [c] lawes and uſages of the realm.

[c] 10 R. 2. rot. par. nu. 8. 2 H. 4. nu. 10. 15 E. 3. nu. 10. 15. 37. 41, 42.

3. That he ſhall truly counſel the king, and his counſell he ſhall [d] layne and keep.

[d] Laine is an ancient French word, and ſignifieth to hide.

4. That he ſhall not know nor ſuffer the hurt or diſheriting of the king, or [e] that the rights of the crowne be decreaſed by any meanes as far as he may let it.

[e] Rot. par. 10 R. 2. nu. 6, 7, 8. &c. the caſe of *Mich. de la Pole* Chancelour of England.

5. And if he may not let it, he ſhall make it clearly and expreſly to be known to the king, with his true advice and counſell.

[89]

6. And that he ſhall do and purchaſe the kings profit in all that he reaſonably may, as God him help, and by the contents of this book.

Vid. artic. 20, 21, 26, 38. 41. 42. 44. 46.

Articles againſt Cardinall Woolſey.

Now for as much as the articles exhibited to king H. 8. 1 *die Decembris anno* 21 of his reign, by the lords and others of his privy councell (whereof Sir Thomas More lord chancelour was one) and by two of the principall judges of the realm againſt cardinall Woolſey, do in divers of the articles concern the juriſdiction of the chancery, (viz. the 20 and 26 articles, &c.) and other titles of this fourth part of the Inſtitutes, we have thought good juſtly and truly to tranſcribe from the very originall, under the proper hands of the lords and others of the privy councell, and of the ſaid judges, (which we have ſeen and had in our cuſtody) and have compared this tranſcript with the originall it ſelfe, and have (becauſe they are of great weight and uſe to many purpoſes) tranſcribed it *de verbo in verbum*, without omiſſion of any thing, as matters of that nature ought to be: and the rather, for that in our Chronicles they are very untruly rehearſed: and before this time (that we finde) the true articles were never printed.

Conſtrained by neceſſity of our fidelity and conſcience, complaine and ſhew to your moſt royall majeſty, we your graces humble, true, faithfull, and obedient ſubjects: that the lord cardinall of York, lately your graces chancelour, preſuming to take upon him the authority of the popes legat *de latere*, hath by divers and many ſundry wayes and faſhions committed high and notable grievous offences, miſuſing, altering, and ſubverting the order of your graces lawes: and otherwiſe contrary to your high honour, prerogative, crown, eſtate, and dignity regall, to the ineſtimable great hinderance, diminution, and decay of the univerſall wealth of this your graces realm. And it is touched ſummarily and particularly in certain articles here following, which be but a few in compari-

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